GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Tribal Welfare Department – East Godavari District - Revision Petition filed by Sri Addepalli Musalayya S/o.Jogulu R/o.Rajavommangi Mandal, East Godavari District against the orders of the Additional Agent to Government dt.22.10.2005 in CMA No.97/2005 with regard to Acs.5.39 cts, Acs.1.85 cts, Acs.8.52 cts & Acs. 6.00cts of land in Sy.No.113/4C, 113/4D, 113/4E & 113/4H situated at Rajavommangi (V&M), East Godavari District - Rejected – Orders – Issued.

SOCIAL WELFARE (TW.LTR-2) DEPARTMENT

G.O.MS.No. 88 Dated: 26.11.2015

Read the following:-

1. Revision Petition filed by Sri Addepalli Musalayya S/o.Jogulu R/o.Rajavommangi Mandal, East Godavari District dated:12.12.2005.
2. Govt.Memo.No.1318/LTR-2/2006, dt. 03.05.2006.
3. From the Additional Agent to Government & Project Officer, ITDA, Rampachodavaram, East Godavari District CMA No.97 of 2005, dt.08.01.2013.
4. Govt.Lr.No.1318/LTR-2/2006, dt.26.05.2015

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ORDER:-

In the reference first read above, Sri Addepalli Musalayya S/o.Jogulu R/o.Rajavommangi Mandal, East Godavari District has filed a Revision Petition before the Government against the orders of the Additional Agent to Government dt.22.10.2005 in CMA No.97/2005 with regard to Acs.5.39 cts, Acs.1.85 cts, Acs.8.52 cts & Acs.6.00cts of land in Sy.No.113/4C, 113/4D, 113/4E & 113/4H situated at Rajavommangi (V&M), East Godavari District.

2. The Government, in the reference 2nd read above, have admitted the said Revision Petition and requested the Collector, East Godavari District to furnish the parawise remarks and connected records on the Revision Petition.

3. In the reference 3rd read above, the Additional Agent to Government & Project Officer, ITDA, Rampachodavaram, East Godavari District has furnished parawise remarks along with the connected records.

4. The above revision petition having been stood over for consideration till 13.06.2015 before the Government and the matter having been heard in presence of both parties on 13.06.2015, the Government passes the following orders:

5. The facts of the case in brief are:

The Special Deputy Collector cum Agency Divisional Officer, Rampachodavaram by his orders in LTRP No.262/2004, dated 29.12.2004 has held that the Respondent Non-Tribe shall be ejected from petition schedule land so as to restore the same land measuring total extent of Acs.21.76 cts situated in Rajavommangi village and Mandal, East Godavari District to Government for onward assignment to eligible tribal beneficiaries and consequently directed the Mandal Revenue Officer Rajavommangi to evict the non-tribal or his men or any other person from Petition Schedule land and comply the orders and to send report of compliance.

6. Aggrieved by the same, the Revision Petitioner filed Appeal before Additional Agent to Government in C.M.A.No.97/2004 which was also dismissed against which the present Revision Petition before Government is filed.

7. The point for consideration is whether the order of Additional Agent to Government who dismissed the Appeal filed by the Revision Petitioner herein, by confirming the orders passed by the learned Special Deputy Collector (Tribal Welfare) is sustainable or not.

(P.T.O)

8. The Petition Schedule land is a Government land and Revision Petitioner is a Non-Tribe. Heavy burden lies on him to prove that he has valid right and title over Petition Schedule land and he is continuing in possession without any violation under LT Regulation 1/1959 as amended by Regulation 1/1970.

9. As per Sec 3 (1)(a) (b) of Land Transfer Regulation

"Section3(1)(a) Notwithstanding anything by enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person. Whether or not such a person is a member of a Schedule Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person who is a member of Schedule Tribe or a Society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Schedule Tribe.

(b) Until the contrary is proved any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Schedule Tribe, shall be presumed to have been acquired by person or his predecessor in possession through a transfer made to him by a member of a Schedule Tribe.

10. Therefore it is apparent, on the plain reading of Sec 3(1)(a) (b) that there is a overriding clause making any sale or transfer in favour of Non-Tribe null and void further there is also a presumption that his possession of immovable property if he is a Non-tribe was an acquisition from a Schedule Tribe (which is squarely prohibited under Sec.3(1) (a) of said Regulation).

11. The Hon'ble Supreme Court in C.A.No.4602 of 1997 and batch in Samath Vs. Government of AP has held that the transfer of land by juristic person or allotment of land by State to a Non Tribe is prohibited.

12. The full Bench of Hon'ble High Court of A.P. has held that the transfer of land by one Non-Tribe to another Non-Tribe is null and void under Section 1 and 3 of APSALT Regulation 1 of 1970 (as reported in 1993 (1) ALT page 409 (FB).

13. Further the reliance is placed on a judgment rendered by Hon'ble High Court of AP reported in **2007 (6) ALD page 292** wherein it was held that even though the land classified as Gayalu or Government Poramboke land, the person who is in possession of such land must be set to be dealing with such immovable property and therefore the same falls within the scope "transfer" as defied under Sec.2(g) of regulation and therefore the said regulation of 1/1959 amended as regulation 1/1970 applies, hence all the authorities have considered this aspect of the matter and arrived at the finding correctly. On the said observation the W.P. is dismissed.

14. In view of the above judgment the argument of Revision Petitioner that there is no prohibited alienation as the land is a Government land is not acceptable and such possession is also overed and hit by sec 3(1)(a) and (b) of above Regulation and all the above judgments are basically in favour of Tribe and a Non-Tribe unless fortified a valid right and title cannot continue in possession of immovable property and the initiation of eviction proceedings against him under the above LT Regulation is perfectly right.

15. Further G.O.Ms.No.971 dated 7.10.1969 also prohibits assignment of Government lands in Agency Area in favour of Non-Tribes.

16. Therefore the petitioner is liable to be ejected as he did not get any patta book under settlement law or any other law.

17. Obviously the Revision Petitioner did not produce any other valid document of title and the APSALT Regulation basically is meant for the protection of interest and welfare of only Schedule Tribes but not non-tribes as per the judgment of the Hon'ble High Court of A.P. and the Hon'ble Supreme Court.

(P.T.O)

18. A non-tribe who does not have a valid title under a document or patta or a grant under any act is not entitled to continue in possession and hence if he found to be in possession of a schedule land in Agency Area is liable to be ejected and the opportunity given to him is sufficient as per the provisions of the said Act.

19. The concurrent findings of facts by the learned Special Deputy Collector and Additional Agent to Government are correct and the same are not liable to be interfered.

20. The contention of the learned Advocate that there is no prohibited transfer in the instant case and that the land in question was recorded as the personal property of Revision Petitioner in the Government records could be true, if the above referred documents filed before Revision Authority (Government) along with written arguments are the certified copies of the originals and they are all the public record and hence they cannot be disregarded and the orders of both Special Deputy Collector and Agent to Government did not examine the correct title and right of parties with reference to subject land even though the orders are too lengthy. The Government is of considered opinion that the orders of above lower Authorities cannot be sustained when such important public record concerning the schedule land is not at all examined.

21. There is no infirmity found in the order of Additional Agent to Government, Rampachodavaram and he has rightly continued the order of Special Deputy Collector (TW) Rampachodavaram. In the result, the Revision Petition is dismissed.

22. The Additional Agent to Government, Rampachodavaram, East Godavari District is requested to take necessary action in the matter accordingly.

23. The original record bearing No.97/2005 containing NF (5) pages CF 1 to 80 pages received from the Additional Agent to Government, Rampachodavaram, East Godavari District, through reference 3rd read above, is returned herewith and he is requested to acknowledge the receipt of the same immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr. A. VIDYA SAGAR
PRINCIPAL SECRETARY TO GOVERNMENT (TW)

To:
The Collector & Agent to Government, Kakinada, East Godavari District.
The Additional Agent to Government & Project Officer, ITDA
Rampachodavaram, East Godavari District.(w.e.
The Special Deputy Collector, Tribal Welfare, Rampachodavaram, East Godavari District.
Copy to:
Sri Marre Babji, Advocate, R/o.Rampachodavaram, East Godavari District – 533 288.
Sri Addepalli Musalayya, S/o.Jogulu, R/o.Rajavommangi (V&M), East Godavari District.
The P.S to Hon'ble Minister (SWE & TWE) for information
The P.S to Principal Secretary to Government (TW)
SF/SC.

// FORWARDED:: BY ORDER //

SECTION OFFICER